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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,172	04/02/2004	Donald P. Bushby	Plantar Fasciitis	3082
<div>7590      09/10/2007</div> <div>KENNETH A. RODDY SUITE 100 2916 WEST T.C. JESTER HOUSTON, TX 77018</div>				
EXAMINER				
PATEL, TARLA R				
ART UNIT		PAPER NUMBER		
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09/10/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/817,172	<b>Applicant(s)</b> BUSHBY, DONALD P.	
	<b>Examiner</b> Tarla R. Patel	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 44-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-66 is/are rejected.
- 7) ☒ Claim(s) 53 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/3/07 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 53 recites the limitation "said arch strap" recited in line 5 of the claim is not supported by the independent claim from which the claim 53 depends. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 44,45,46,56,62 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by Burgess (6,640,465).

4. Burgess discloses an orthotic plantar fascia device for providing support to and reducing stress on, the plantar fascia of a human foot. The device comprises a thin flexible stretch-resistant device (110) (as best can be understood from applicant's specification and claims the "stretch-resistant device" is a sufficiently flexible article with adhesive lining and there in no other distinguish structures is required therefore, the device of Burgess meets this claimed limitation), and the device has a sole engaging surface (see figure 2), sized and shaped to engage the outer skin tissue on the sole of the foot (column 2 lines 38-40) and extend along the plantar fascia region of the foot from about the ball of the foot to the heel of the foot

for providing support to the plantar fascia region of the foot (see fig 2). The device further includes an adhesive layer (120) on the sole engaging surface for adhering the device directly to the outer skin tissue on the sole of the foot (column 2 lines 62-67) and a protective cover (150) removably disposed over adhesive layer, that when removed, exposes the adhesive layer (column 4 lines 50-55). The stretch-resistant device, as best can be understood from applicant's specification and claims, the device of Burgess described above, is inherently stretch-resistant to restrict extension and stretching of the outer skin tissue on the sole of the foot, when the device of Burgess adhered to the sole, such that tension forces applied to the plantar fascia from the forces on an arch of the foot which push the bones of the foot downwardly are shared with a the device to restrict stretching (when the device described above adheres to the bottom of the foot or sole) and are reduce tension in the plantar fascia.

With respect to claims 45 and 46, Burgess inherently discloses a device that has a uniform thickness (column 3 lines 52-54) of less than about 30 mils, (since column 3 lines 13-15, describes the thickness of about 1 mm to about 5 mm inherently discloses the less than about 30 mils required by claim, since examiner interprets "about" language as broadest reasonable

interpretation, since 1 mils= 0.0254 mm) and formed of a fabric material (column 4 lines 5-10).

With respect to limitations of Burgess inherently discloses the method for reducing stress on the plantar fascia of a human foot comprising the steps of providing a thin flexible device of uniform thickness having sole engaging surface and adhering sole engaging surface to the outer skin tissue on the sole of the foot to extend from the heel of the foot to at least the mid portion of the foot to provide support to the plantar fascia region, since Burgess discloses the structure limitation of the device and as best can be understood from applicant's specification and claims the "stretch-resistant device" is a sufficiently flexible article with adhesive lining and there in no other distinguish structures is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 44,48-54, and 56-61 rejected under 35 U.S.C. 103(a) as being unpatentable over Turtzo (2002/0188239) in view of Burgess (465).

Turtzo substantially discloses an orthotic plantar fascia device for providing support to and reducing stress on, the plantar fascia of a human foot, comprising a thin flexible stretch-resistant device (as best can be understood from applicant's specification and claims the "stretch-resistant device" is a sufficiently flexible article with adhesive lining and there in no other distinguish structures is required, therefore, the device of Turtzo meets this claimed limitations) and the device (24) having a sole engaging surface (see figure 4), sized and shaped to engage the outer skin tissue on the sole of the foot (see paragraph 0011,0023) and extend along the plantar fascia region of the foot from about the ball of the foot to the heel of the foot for providing support to the plantar fascia region of the foot (see fig 4) and the device is inherently stretch-resistant to restrict extension and stretching of the outer skin tissue on the sole of the foot, when the device adhered to the sole, such that tension forces applied to the plantar fascia from the forces on an arch of the foot which push the bones of the foot downwardly are shared with device to restrict stretching (when the device described above adheres to the bottom of the foot or sole) and are able to reduce tension in the plantar fascia (0027).

Turtzo further discloses thin flexible straps extending laterally outward from opposite sides to at least partially encircle the talus, the navicular, the cuneiform and the cuboid region of the foot, an arch strap and a heel strap (see figs 4, 14,15,42,44), wherein the straps can be adhered to the foot by an adhesive (see paragraph 0026,0030) for securing the straps around the portions of the foot (0030) as required by claims 48,51,53,56,57,58,59,60, and 61.

With respect to claims 50,52 and 54, Turtzo discloses the straps are integrally formed with device (see fig 1).

However Turtzo does not disclose the adhesive on support means to adhere to bottom of the foot by adhesive on the top of the device. However Burgess teaches a foot support device having an adhesive on the top of the device (120, column 2 lines 58-67). Burgess further teaches a removable protective covering attached to the adhesive surface (column 4 lines 49-55) on top of the device. At the time of the invention, it would have been an obvious to one skilled in art to have modify the device of Turtzo as taught by of Burgess to adding adhesive to the top surface of the device to have adhesive on top surface of the device to adhere the support device to the



bottom of the foot and protective covering to protect the device from dust and foreign materials.

7. With respect to claims 44,56, and 60, the limitations of “restricting extension and stretching of the outer skin tissue on the sole of the foot”, when the device described above adheres to sole, such that the tension forces applied to the plantar fascia from the forces on an arch of the foot which push the bones of the foot downwardly are shared with device to restrict stretching (when the device described above adheres to the bottom of the feet or sole) and are able to reduce tension in the plantar fascia (0027), the examiner interprets the limitations of securing the device on user’s foot Turtzo results in treating pain in at least one of the heel, or arch or ball of the foot (see paragraph 0016 and 0027) and controls the step to prevent extension and stretching, reduce tension on the plantar fascia of the foot.

8. As required by the claims 44,48-54, and 56-61 Turtzo substantially disclose the invention as claimed. Turtzo does not disclose the support device is made of materials, which are substantially stretch resistant. However Burgess teaches the support device can be made of various materials to form the resilient device (column 4 lines 4-10, as best can be

understood from applicant's specification and claims the "stretch-resistant device" is a sufficiently flexible article with adhesive lining and there in no other distinguish structures is required). At the time of the invention, it would have been an obvious to one skilled in art to make the device of Turtzo with various material to form resilient device, as taught by Burgess to have better stretch resistant device for the user and to have more flexibility and resilience.

9. Claims 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess in view of Huddleston et al. (4,997,709).

Burgess substantially disclose the invention as claimed; see rejection to claims 44,45,46,56, 62, and 66 above; Burgess does not disclose a support device that has less than 15% elongation when subjected to a tensile load (lb/in-width) approximately equivalent to 25 pounds/inch in accordance with ASTM D3759.

However, Huddleston et al. teaches novel adhesives and tapes having the tensile load (lb/in-width) approximately equivalent to 25 pounds/inch in accordance with ASTM D3759 (column 1 lines 48-63). At the time of the invention, it would have been an obvious to one skilled in art to use the tapes/adhesives of the tensile load (lb/in-width) approximately equivalent to

25 pounds/inch in accordance with ASTM D3759 to the device of Burgess, as taught by Huddleston et al. to have more resiliencies to the device.

10. Claims 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess in view of Dalton (2004/0118017).

Burgess substantially disclose the invention as claimed; see rejection to claims 44,45,46,56, 62, and 66 above; Burgess does not disclose a support device that has a sole includes medicinal additives, anti-fungal treatments, anti-microbial treatments, anti-inflammatory treatments, deodorants, and tea tree oil.

However, Dalton teaches a support device having an insole that is treated with antibacterial agent (0031). At the time of the invention, it would have been an obvious to one skilled in art to treat the sole of the support device of Burgess with antibacterial agent to avoid odor causing bacteria and fungus.

11. Claims 63,64, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgess in view of Turtzo.

Burgess substantially disclose the invention as claimed; see rejection to claims 44,45,46,56, 62, and 66 above; Burgess does not disclose a support device that includes thin flexible straps extending laterally outward from

opposite sides to at least partially encircle the talus, the navicular, the cuneiform and the cuboid region of the foot, an arch strap and a heel strap, wherein straps can be adhered to the foot by an adhesive for securing around the portions of the foot.

However, Turtzo teaches a support device including thin flexible straps extending laterally outward from opposite sides to at least partially encircle the talus, the navicular, the cuneiform and the cuboid region of the foot, arch strap and heel strap (see fig 4, elements 14,15,42,44), wherein straps can be adhered to the foot by an adhesive (see paragraph 0026,0030) for securing around the portions of the foot (0030). At the time the invention was made, it would have been obvious to one having ordinary skill in art to use the teaching of having straps and adhesive on the straps to the device of Burgess, as taught by Turtzo to better secure the device to foot of the user.

### ***Conclusion***

**12.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Green (2003/0145495) discloses a flexible orthotic device. Stephenson (2005/0011084) discloses a disposable slipper. Kawata (2004/0261294) discloses a shoe insole. Spence

(3,449,844) discloses a protective inner sole. Innis (1,980,621) discloses a sanitary sandal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TP

  
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9/3/07